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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,768	12/29/2000	Henri Waelbroeck	061165-0007	8654
9629	7590	01/22/2009		
MORGAN LEWIS & BOCKIUS LLP			EXAMINER	
1111 PENNSYLVANIA AVENUE NW			HAMILTON, LALITA M	
WASHINGTON, DC 20004				
			ART UNIT	PAPER NUMBER
			3691	
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			01/22/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* HENRI WAELBROECK,  
FRED J. FEDERSPIEL and JAMES J. ANGEL

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Application 09/750,768  
Technology Center 3600

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Mailed: January 22, 2009

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Before VASCO S. HARPER, *Paralegal Specialist*  
HARPER, *Paralegal Specialist.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 15, 2008 A review of the application has revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

**EXAMINER'S ANSWER, GROUNDS OF REJECTION**

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner's Answer mailed August 21, 2008 under the heading "Grounds of rejection" is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. "For each ground of rejection maintained by the examiner and each new ground of rejection (if any), an explanation of the ground of rejection thereof." *See also Manual of Patent Examining Procedure (MPEP) § 1207.02 (8<sup>th</sup> ed. Rev. 7, July 2008).*

According to the Final Rejection mailed June 14, 2007 and the Advisory Action mailed June 4, 2008, claims 1, 2 and 4-39 remain rejected. According to Appellants' Brief filed June 3, 2008 claims 1, 2 and 4-39 are being appealed" However, the Examiner has not addressed the rejection of claim 39 in the Grounds of Rejections nor explicitly withdrawn the claim in the Answer mailed August 21, 2008. Clarification and or the status of claim 39 is required.

**INFORMATION DISCLOSURE STATEMENT**

Appellant filed an Information Disclosure Statement (IDS) on September 10, 2008. There is no indication on the record that the Examiner has considered the above IDS. MPEP § 609 requires the Examiner to consider any IDS filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner's consideration of the above IDS is required.

**CONCLUSION**

Accordingly, it is ORDERED that the application be returned to the Examiner to:

- 1) clarify the status of claim 39;
- 2) consider the IDS filed September 10, 2008; and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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